

## R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. 13017-2001U requesting certification of a nonconforming auto sales, auto repair, and vehicle towing and storage use in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on April 11, 2002, the Prince George's County Planning Board finds:

- A. Location and Field Inspection: The subject property is a rectangular parcel that is .8 acre in size, located on the north side of Chillum Road, approximately 500 feet west of Queens Chapel Road. It is developed with a small auto repair business and towing service. A sign on the property identifies it as Buttrey's Auto, Inc., Parts and Repairs, 779-7886. The site is developed with a small office and a small garage. The balance of the site is used for the storage of automobiles apparently awaiting repair. One vehicle parked in front of the fence adjacent to the Henderson Automotive Business carried a AFor Sale@ sign on or inside its windshield. No other vehicles appeared to be for sale on the property.
- B. History: The subject property was rezoned from the C-M Zone to the O-S Zone on July 14, 1992, by the *West Hyattsville Transit District Development Plan*. This zoning was left in place by the 1994 *Planning Area 68 Master Plan and Sectional Map Amendment* which incorporated the zoning decisions of two transit district development plans into the Master Plan. An amendment to the *West Hyattsville Transit District Development Plan* (TDDP) was approved on June 23, 1998, at which time the subject site and adjacent properties were placed in the C-S-C Zone.
- C. Master Plan Recommendation: The 1994 *Planning Area 68 Master Plan and Sectional Map Amendment* incorporated the recommendations of the *West Hyattsville Transit District Development Plan*, which were, in turn, revised by the 1998 *West Hyattsville Transit District Development Plan*. The subject site is located in Subarea 8 of the 1998 TDDP. None of the uses requested for certification is permitted, except that nonconforming uses may be continued.
- D. Surrounding Uses: The subject property is surrounded by the following uses:

North - Northwest Branch

East - Henderson Tire and Auto Center and Henderson Automotive, Queenstown Car Wash, a small retail center, and an Exxon gas station, all in the C-S-C Zone

South - Across Chillum Road there is a shopping center containing a Shoppers Food Warehouse and a U-Haul self-storage center, in the C-S-C and C-M Zones

West - Queenstown Auto Electric Service, in the C-S-C Zone

E. Certification Requirements: Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning or have been established in accordance with all regulations in effect at the time it began. Second, there must be no break in operation for more than 180 days since the use became nonconforming. Section 27-244 sets forth the specific requirements:

1. **In general, a nonconforming use may only continue if a use and occupancy permit identifying the use as nonconforming is issued after the Planning Board (or its authorized representative) certifies that the use is really nonconforming and not an illegal use.**
2. **Application for Use and Occupancy Permit:**
  - a. **The applicant shall file for a use and occupancy permit.**
  - b. **Along with the application and accompanying plans, the applicant shall provide the following:**
    - (1) **Documentary evidence, such as tax records, business records, public utility installation or payment records and sworn affidavits showing the commencing date and continuous existence of the nonconforming use.**
    - (2) **Evidence that the nonconforming use has not ceased to operate for more than 180 consecutive calendar days between the time the use became nonconforming and the date when the application is submitted or that conditions of nonoperation for more than 180 consecutive calendar days were beyond the applicant's and/or owner's control, were for the purpose of correcting Code violations, or were due to the seasonal nature of the use.**
    - (3) **Specific data showing:**
      - (i) **The exact nature, size and location of the building, structure and use.**
      - (ii) **A legal description of the property.**
      - (iii) **The precise location and limits of the use on the property and within any building it occupies.**

**(4) A copy of a valid use and occupancy permit issued for the use prior to the date upon which it became a nonconforming use, if the applicant possesses one.**

The applicant submits that the property has been leased to its current occupant, Buttrey=s Auto, Inc., since May 23, 1984, and that the property has been used continuously since that time for an auto sales, auto repair, towing ,and storage business. The owner is currently in the process of selling the property.

The tenant, Mr. G.N. Buttrey, indicates in a letter to staff that although the property has been used for auto repair, towing and storage, it has not been used for auto sales.

F. Documentary Evidence:

The applicant has submitted the following:

1. A copy of Use and Occupancy Permit No. 394-83U, which states that the use of the property was for Aauto and other motor vehicle repair, used car sales, and auto parts/retail.@
2. A copy of Use and Occupancy Permit No. 2937-84-CU, approved for the construction of a six-foot-high fence, and listing the existing use as Aauto repair service@ and the proposed use as Aauto towing station.@
3. A letter from James Henderson of Henderson Automotive, the business which adjoins the subject property to the east, dated June 20, 2001. Mr. Henderson states that he has been doing business at the adjoining location for 30 years and that he has observed the subject site being used continuously as an auto repair garage, an auto sales lot and a towing yard since prior to 1992 (the year the uses became nonconforming).

Mr. G.N. Buttrey, the tenant of the property, submitted a letter to Mary Hampton, of the Permit Review Section, on September 19, 2001. In that letter, Mr. Buttrey states that his business has occupied the property since 1983 and that Buttrey=s Auto operates as an automotive repair facility. He indicates that although the Use and Occupancy permit allows the property to be used for auto sales, he has never obtained a business license for auto sales. He states that his business has not used the property for the sale of new or used automobiles.

G. Conclusion:

The letters from the long-standing tenant and the next-door businessman, as well as the field inspection of the property, confirm the fact that an auto repair, towing and storage business has been conducted on the site continuously since prior to the date in 1992 when these uses became nonconforming. The case for automobile sales is less clear. The signs on the property do not contain information about auto sales, nor were sales display areas indicated on the site. The testimony of individuals knowledgeable about the history is inconsistent and therefore, unconvincing.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George=s County Code, the Prince George=s County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED CNU-13017-2001U, for an auto repair, towing and auto storage business. The request for an auto sales business is DENIED.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board=s action must be filed with the District Council for Prince George=s County, Maryland within thirty (30) days of the final notice of the Planning Board=s decision.

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Eley, seconded by Commissioner Brown, with Commissioners Eley, Brown, Scott and Hewlett and with Commissioner Lowe absent voting in favor of the motion, at its regular meeting held on Thursday, April 11, 2002, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 9th day of May 2002.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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